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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1949.

No. 575.

R. E. CONNER, KENNETH L. KNITTER, and VINCENT L. PETENBRINK, Suing on Behalf of Themselves and all Others Similarly Situated, *Petitioners*,

v.

THE PENNSYLVANIA RAILROAD COMPANY, BROTHERHOOD OF RAILROAD TRAINMEN, H. F. SITES, A. F. WHITNEY, E. W. WILSON, CHARLES F. PUSEY, J. H. ALLERS, JOSEPH M. DECKER, C. A. LEATHERS, JR., E. R. BRISCOE, J. E. BERBIG, F. J. MEADOWCROFT, C. H. GITTINGS, W. F. HARRISON, NATHAN BERKMAN, J. M. PARKER, EARL R. DEANER, B. J. SHANKWEILER, I. E. WAGNER, H. F. HANNY, W. A. SCOTT, H. W. HIGHFIELD, R. E. SATTERFIELD, SANFORD R. HALLIDAY, L. C. LECOMPTE, E. D. SAXTON, and CLIFTON K. AREHART, *Respondents*.

## BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

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## BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

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### Opinions Below.

The opinion of the United States Court of Appeals for the District of Columbia Circuit (R. 65-72) is reported in

177 F. (2d) 864. The opinion of the District Court (R. 60-62) is unreported.

## Jurisdiction.

The jurisdiction of this Court is invoked under Section 1254 of the Judicial Code.

## Questions Presented.

1. Whether the Circuit Court of Appeals for the District of Columbia Circuit correctly held that the Selective Training and Service Act required the respondent railroad to extend to each respondent freight trainman upon his return from service with the armed forces of the United States the privilege of applying for transfer from the freight service to the passenger service as of the date when he would have had that privilege had he not been away in military service, with corresponding seniority status on the passenger trainmen's seniority roster.

2. Whether the Circuit Court of Appeals for the District of Columbia correctly held that the petitioners, as passenger trainmen, were not entitled to recover damages from the respondent railroad for failing to permit them to transfer from passenger service to freight service as of the various dates when they could have so transferred had they not been away in military service, where it does not appear that any petitioner has ever applied for such transfer at any time after returning from military service.

## Statement.

Petitioners' Amended Complaint (R. 10) sets forth two alternative causes of action. The first cause of action involved petitioners' status on the *passenger* trainmen's seniority roster on the Maryland Division of respondent, The Pennsylvania Railroad Company. The second cause of action involved petitioners' status with respect to the *freight* trainmen's seniority roster on the Maryland Divi-

sion. Petitioners assert their second cause of action only in the event that the first cause of action should be decided in favor of the respondents. The facts with respect to the two causes of action are separately considered below. In the District Court, Chief Justice Laws held against petitioners on both causes of action. The Court of Appeals held against petitioners on the first cause of action and also held that petitioners were not entitled to damages on their second cause of action, although the Court of Appeals granted to the petitioners certain other relief requested in their second cause of action.

*First Cause of Action*

The first cause of action represents, in essence, a conflict between two groups of individuals as to their relative seniority as passenger trainmen. Both groups are veterans, claiming benefits under the reemployment provisions of Section 8 of the Selective Training and Service Act of 1940, c. 720, 54 Stat. 885, 891 (U. S. C., Title 50, Appendix, § 308). Petitioners, representing one group, contend that their seniority rights as passenger trainmen were unlawfully diluted by reason of the fact that members of the second group were placed ahead of them on the passenger trainmen's seniority roster. (R. 18, 19, 20, 21) Petitioners therefore seek a declaratory judgment, an injunction, an accounting and other relief against the twenty-three individual trainmen in the second group as well as against the Brotherhood which represents both groups of trainmen, the President and General Chairman of that Brotherhood and the railroad. (R. 14, 23, 24)

As alleged in the Amended Complaint, there are more than seventy-eight veterans who are in the same situation as petitioners (R. 12); hence there are many possible permutations and combinations of seniority relationships between these persons and the individual respondent trainmen. In the interest of simplification and clarification the circumstances common to all these relationships may be summarized as follows:

(1) Under the applicable collective bargaining agreement and the custom and practice in effect on the Maryland Division, whenever additional passenger trainmen were needed men on the freight trainmen's seniority roster were given the first opportunity, in order of their seniority, to transfer to the passenger service, and, therefore, to the passenger trainmen's seniority roster. (R. 15, 42, 45, 46)

(2) Each of the respondent trainmen was serving as a freight trainman, with standing on the freight trainmen's seniority roster, when he was inducted into the armed services. (R. 55-59)

(3) During the time when each respondent trainman was in military service, a vacancy or vacancies occurred in the passenger service which the said respondent trainman would have been entitled to fill because of his freight trainman's seniority if he had not been away with the armed forces. (R. 44)

(4) The vacancy or vacancies in the passenger service were filled by one or more freight trainmen who were junior to the said respondent trainman in freight service. (R. 19, 55-59) Petitioners transferred to the passenger service while the said respondent trainmen were in military service; the petitioners thus transferring either had been junior on the freight trainmen's seniority roster to the said respondent trainmen or had permitted other freight trainmen junior both to the petitioners and to the respondent trainmen to transfer ahead of them. (R. 19)

(5) At some time after entering passenger service, each of the petitioners was inducted into the armed forces. (R. 11, 12) Upon return from military service, each of them was reemployed in passenger service with seniority dating as of the date of his original transfer to passenger service, or in other words,

with his time with the armed forces being counted for seniority purposes as though he had been continually on the job. (R. 55-59)

(6) When each of the respondent trainmen returned from military service, he was given the opportunity to transfer from freight to passenger service which he would have had if he had not been away with the armed forces. Having elected promptly upon his return so to transfer he was placed on the passenger trainmen's seniority roster immediately ahead of the junior freight trainman who had first transferred to passenger service while he was away. (R. 19)[1]

(7) The result of the above practice is that each of the petitioners now finds ahead of him on the passenger trainmen's seniority roster at least one respondent trainman who was not ahead of him on that roster when the said petitioner left for military service. By their first cause of action, petitioners seek for this reason to have the respondent trainmen removed from the passenger roster altogether or at least placed at the foot of the roster. (R. 23)

(8) The Court of Appeals held in favor of the respondent trainmen on the ground that, in order to avoid being penalized by reason of their absence in military service, they were entitled under the Selective Training and Service Act of 1940, to the opportunity to elect to transfer from freight to passenger service which they would have had if they had not been away.

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[1] Upon his transfer each respondent trainman was thus accorded seniority in passenger service as of the date when he first could have transferred had he not been away in military service, retaining seniority in freight service only up to that date. (R. 30) His position, on both seniority rosters after the transfer, was exactly what it would have been, under section 3-F-1 of the collective bargaining agreement (R. 16), if he had not been away and had elected to transfer from freight service to passenger service when the opportunity first arose.

(R. 69-70) The decision of the District Court was based on similar grounds. (R. 60-61)

The above arrangements for protecting the seniority rights of the respondent trainmen as veterans were provided for and regularized by express written agreement entered into in February, 1942, between respondent railroad and respondent Brotherhood, acting on behalf of all trainmen (including both petitioners and respondents). (R. 29-30) At varying times during the years 1944, 1945, 1946 and 1947, the various respondent trainmen returned from military service, promptly elected to transfer from freight to passenger service and were so transferred in accordance with the terms of this agreement. (R. 18-19, 55-59) Both the Court of Appeals and the District Court held that it was unnecessary to consider the effect of this agreement because it afforded to the respondent trainmen the same rights as were afforded to them by the Selective Training and Service Act. (R. 61, 70)

*Second Cause of Action*

Petitioners' second cause of action also involves the conflicting claims of two groups of trainmen on the Maryland Division of respondent railroad. However, these conflicting claims relate to employment and seniority rights with regard to the Maryland Division's freight trainmen's seniority roster, rather than its passenger trainmen's seniority roster, with which the first cause of action is concerned.

As pointed out above, the petitioners are veterans who were trainmen in the passenger service of the Maryland Division when they left to enter the armed forces of the United States and who, upon their return, were re-employed as passenger trainmen and treated in every respect, including their position on the passenger trainmen's seniority roster, on the same basis as if they had continued in active service on the Maryland Division throughout the period of their military service. (R. 55-59)

The other group of trainmen, who have not been made parties to this proceeding, are trainmen in the freight ser-

vice of the Maryland Division who entered into such service while the appellants were in the military service. (R. 22) The group includes both non-veterans and veterans, those of them who are veterans having entered military service after plaintiffs did.

For their second and alternative cause of action, the petitioners allege that, in the event that the courts should decide the first cause of action in favor of respondents and adjudge it lawful for the respondent trainmen to have been transferred to passenger service and to have been accorded seniority status in such service ahead of those who joined the passenger service during their absence, the petitioners should likewise, under the Selective Training and Service Act of 1940, be given the opportunity to transfer from passenger service to freight service with greater seniority than those who entered the freight service during the period that the petitioners were serving with the armed forces. In support of this second cause of action the petitioners allege that some kind of notice should have been given to them with respect to applications being received for positions in freight service while they were in military service. (R. 22)

On the basis of the above allegations, the petitioners demand that, if the first cause of action be decided against them, the respondent railroad be compelled to tender to plaintiffs, at or some time after the time that such decision is rendered, an opportunity to transfer from the passenger service to the freight service with each of them to receive a seniority date on the freight trainmen's seniority roster ahead of all employees thereon who were accepted for freight service while the particular petitioner was in military service. (R. 23-24) Petitioners also demand that the respondent railroad be compelled to tender petitioners damages alleged to have been incurred by them by reason of respondent railroad's failure to accord petitioners the opportunity so to transfer, following their return to its employ from military service. (R. 24) However, there is

no allegation that any of the petitioners have ever asked for such a transfer; their Amended Complaint asks for the opportunity to decide whether so to transfer only if they lose out in the courts on the first cause of action. There is likewise no allegation, and no proof by affidavit or otherwise, that there was any custom and practice for men in the passenger service to transfer to freight service, when vacancies occurred in the freight service, on the basis of their seniority in passenger service, and the absence of any such custom and practice has been expressly recognized by both of the courts below. (R. 62, 71)

The District Court decided against petitioners on their second cause of action on the grounds that they had failed to show a custom and practice establishing a seniority right of transfer from passenger service to freight service and that in no instance would petitioners have elected to transfer from passenger to freight service if the opportunity to do so had been presented during the time that they were in military service. The District Court concluded that they therefore were not in the position of having been denied a valuable right of choice by reason of their war service. (R. 61-62)

The Court of Appeals affirmed in part and reversed in part the decision of the District Court on petitioners' second cause of action. The Court of Appeals held that the respondent railroad should be required to tender to the petitioners an opportunity to transfer from passenger to freight service corresponding to the opportunity granted to the respondent trainmen to transfer from freight to passenger service, with retroactive seniority, when they returned from military service. (R. 70-71) All the respondents have filed Conditional Cross-Petitions for Writ of Certiorari with respect to this portion of the decision of the Court of Appeals. (Cases Nos. 645 and 646, October Term, 1949) The Court of Appeals also held that the petitioners had failed to show a cause of action for damages under this second cause of action since there was nothing to show a

demand by any of the petitioners for transfer from passenger to freight service or a refusal by the respondent railroad to permit such transfer. (R. 71-72)

**Statutes Involved.**

Pertinent provisions of the Selective Training and Service Act of 1940 are set forth in the supplement to this Brief.

## ARGUMENT.

### I.

The instant case does not present any important question of law that requires or deserves the exercise of this Court's discretionary jurisdiction. It involves only the application to the particular facts of principles already defined by this Court.

These principles are that, under Sections 8(b) and 8(c) of the Selective Training and Service Act of 1940, the veteran returning from service with the armed forces is not to step back "on the seniority escalator at the point he stepped off . . . [but] at the point he would have occupied had he kept his position continuously during the war." *Fishgold* v. *Sullivan Drydock & Repair Corporation,* 328 U. S. 275, 284. In other words, he is "entitled by the Act to be restored not to a position which would be the precise equivalent of that which he had left when he joined the armed forces, but rather to a position which, on the moving escalator of terms and conditions affecting that particular employment, would be comparable to the position which he would have held if he had remained continuously in his civilian employment." *Oakley* v. *Louisville & N. Railroad Co.,* 338 U. S. 278, 283; see also *Aeronautical Lodge* v. *Campbell,* 337 U. S. 521.

Applying these principles to the facts in the present case, both the District Court and the Court of Appeals decided that each respondent veteran was entitled, on his return from military service, to be accorded the privilege of trans-

fer from freight service to passenger service which he would have had if he had not been absent with the armed forces. This privilege, which was in fact accorded to him by respondent railroad, is the subject of petitioners' attack in their first cause of action.

The decision of the Court of Appeals in favor of respondents on this cause of action is based on the undisputed fact that (R. 69):

> "When additional passenger trainmen were needed, the established practice was to transfer to passenger service qualified trainmen in freigh service who made application for such transfer and who possessed the highest seniority in freight service."

The District Court's decision likewise emphasizes the significance of this "established custom." (R. 60, 62)

In addition, it may be noted, the applicable collective bargaining agreement expressly provides for transfers between the freight roster and the passenger roster. (R. 15, 66) It also provides that an employee returning from a furlough or leave of absence of thirty days or more may exercise his seniority on any assignment or pool advertised and filled during his absence.[2]

These facts alone distinguish the instant case from the cases which petitioners cite as being in conflict.[3] Thus, in

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[2] Rule 2-A-3(b) of the Agreement, Exhibit "A" to the Amended Complaint, on file with the clerk although not included in the printed record.

[3] The distinctions between "parallel" and "tandem" rosters, and between "promotion" and "transfer", which petitioners have urged in both courts below and now urge here, are utterly without significance. None of the cases cited makes any such distinction and neither does the language of the Selective Training and Service Act. The important fact is that, as the courts below have found (R. 61, 69), the respondent trainmen in this case lost out on a valuable benefit while they were away in military service, *viz.*, the privilege of electing whether or not to transfer to fill a vacancy in the passenger service. As soon as they returned from military service they promptly elected to so transfer and were properly permitted to do so.

*Hewitt* v. *System Federation No. 152 Ry. Employees' Dept. A.F.L.*, 161 F. (2d) 545 (C.C.A. 7th, 1947), the Circuit Court of Appeals emphasized that the car cleaners and the carman helpers, "by their collective bargaining agreement, had separate seniority rights among themselves, without a provision whereby an employee classified as a car cleaner might transfer and be classified as a carman helper on the basis of seniority rights" and that the trial court had found as a fact (161 F. (2d) at p. 547):

> "That petitioner at the time of his induction into the Armed Forces, had no right to promotion from the classification of car cleaners to the classification of carman helpers by virtue of any custom or written contract."

In view of this finding the Circuit Court of Appeals for the Seventh Circuit held that the trial court was in error in permitting the petitioner upon his return from military service to transfer to the class of carman helper with retroactive seniority in that class.

Similarly, in *Raulins* v. *Memphis Union Station Company*, 168 F. (2d) 466 (C.C.A. 6th, 1948), the trial court had found as a fact that the plaintiffs "had no fixed right to promotion from the position of electrician-helper to the position of electrician by virtue of any custom or by virtue of any contract, written or otherwise" and that other things, particularly qualifications, besides seniority as electrician-helper required consideration in filling vacancies on the electrician roster.

*Special Service Co.* v. *Delaney*, 172 F. (2d) 16 (C.C.A. 5th, 1949), and *Boston & Maine R. Co.* v. *David*, 167 F. (2d) 722 (C.C.A. 1st, 1948), also present situations where there was no evidence of any pre-existing agreement or custom to afford rights of promotion or transfer from one roster to another on the basis of seniority alone.

In *Trischler* v. *Universal Potteries, Inc.*, 78 F. Supp. 609 (S.D. Ohio, 1947), aff'd. 171 F. (2d) 707 (C.C.A. 6th, 1948), the trial court had found as a fact that under the estab-

lished practice an employee returning from furlough or leave of absence would not have been accorded the opportunity to fill an apprenticeship vacancy which would have been his had he been on active duty and that this active duty requirement was peculiarly important since the increasing proficiency obtained from experience on the job made for greater production in the plant and greater income to all piecework employees, whose volume of production depended in part on the volume of production of the apprentices. These facts find no parallel whatsoever in the facts of the present case.

*Spearmon* v. *Thompson, Trustee Mo. Pac. Ry. Co.*, 167 F. (2d) 626 (C.C.A. 8th, 1948), cert. den. 335 U. S. 822 (sub. nom. *Thompson, Trustee* v. *Spearmon*) and 335 U. S. 886 (sub. nom. *Delozier* v. *Thompson*), opinion on rehearing, 173 F. (2d) 452, likewise cited by petitioners as being in conflict with the decisions below in the instant case, also presents an entirely different fact situation from the one now under consideration. This decision, moreover, actually supports the decision of the Court of Appeals in the present case since the three successful plaintiffs there were permitted to exercise a valuable seniority right by making retroactively a choice which was afforded them by the applicable agreement and which necessarily had been postponed because of their absence in the armed forces, i.e., the opportunity at the end of three years' actual service as carman mechanics of choosing (a) to remain as mechanics and thus to acquire for the first time seniority on the mechanics' roster (with loss of all accumulated seniority on the carman helpers' roster) or (b) to return to the carman helpers' roster with the three years' probationary work as a mechanic to be counted as seniority on the helpers' roster.

All of the Circuit Court of Appeals decisions claimed by petitioners to be in conflict with the decision below in the instant case had been decided when this Court denied *certiorari* in *Chesapeake & Ohio Railroad Co.* v. *Morris*, 336 U. S. 967, opinions below, 171 F. (2d) 579 (C.C.A. 7th, 1949) and 75 F. Supp. 429 (N.D. Ind., 1947), the argument in sup-

port of that *certiorari* petition having been made on the same ground, of an alleged conflict among the circuits, which petitioners now urge. That case is on its facts more closely analogous to the present case than any of the decisions cited by petitioners and represents a square holding in favor of a returning veteran standing in a situation very similar to that of the respondent trainmen here on their return from military service. In upholding the lower court, the Circuit Court of Appeals said (171 F. (2d) at p. 580):

> "The issue is, can a qualified veteran who was returned to the position he left demand and receive by the authority of the Act the seniority in a better position which was acquired by a non-veteran with less seniority in the first position while the veteran was in service.
>
> "The District Judge determined this issue in favor of the veteran and we agree with his conclusion in the light of the instant facts that plaintiff had the right as an attribute of his position as telegrapher to bid for an advertised dispatcher's position, and that his military service legally excused him from his failure to bid for the two vacancies filled while he was in service by two men who were junior to him on the telegraphers' seniority roster.
>
> "We hereby adopt the opinion of Judge Swygert as the opinion of this court."

The instant case presents no new or different issue from that described in the foregoing quotation, and neither the record nor petitioners' argument shows any special factors warranting this Court's consideration of the instant case after having refused to take jurisdiction in the *Morris* case, *supra*, as well as in other recent cases involving these same general issues as applied to varying fact situations. *Thompson, Trustee* v. *Spearmon, supra,* 335 U. S. 822; *Delozier* v. *Thompson, Trustee,* 335 U. S. 886; *Dougherty* v. *General Motors Co.,* No. 518, Oct. Term, 1949, 18 U.S.L. Week 3233 (U. S. Feb. 13, 1949).

## II.

The petitioners' demand for damages in connection with their second cause of action is completely unwarranted, and the denial of that demand by the Court of Appeals raises no significant issue for determination by this Court.

The claim for damages, and petitioners' entire second cause of action, were asserted for the first time in the Amended Complaint, filed December 17, 1947 (R. 10, 22-23), at which time petitioners, under any possible theory of the facts, certainly knew the full extent of the rights that they were attempting to assert both with respect to the passenger trainmen's seniority roster and with respect to the freight trainmen's seniority roster. In the Amended Complaint petitioners renewed with equal vigor, in their first cause of action, the contention that they were entitled to have the respondent trainmen placed below them on the passenger trainmen's seniority roster or even removed from that roster altogether.

If petitioners should be successful in that contention, which they continue to assert today notwithstanding the contrary decisions of the District Court and the Court of Appeals, their Amended Complaint makes it abundantly clear that they would have no interest whatsoever even in claiming the opportunity now to transfer from their present positions in passenger service to positions in freight service with retroactive seniority. Thus, the second cause of action in the Amended Complaint is by its very terms made "alternatively, and in the event the Court shall adjudge that the action of defendant [respondent] Railroad was lawful as to defendant [respondent] freight trainmen transferring to the passenger roster with passenger seniority accruing during their services in the armed forces . . ." (R. 22) The prayers in connection with the second cause of action are likewise made alternatively and in the event that the prayers in connection with the first cause of action be not granted. (R. 23)

In this state of the record, petitioners now contend, in effect, that in the event that this Court should decide in favor of respondents on the first cause of action, but only in that event, the petitioners should be awarded damages from the respondent railroad to compensate them for whatever losses they may have suffered as a result of remaining on the passenger roster instead of transferring to the freight roster. They assert that they are entitled to such damages "at the least" from the date of filing the Amended Complaint. (Petition, p. 21, fn. 4) In other words, petitioners assert that, if they should prove to be wrong in the course of action which they have been following, with advice of counsel, for the past two years and more, then petitioners should recover from the railroad "compensatory damages" covering at least that period for the losses which they sustained in following that course of action.

In describing the decision of the Court of Appeals on the second cause of action, petitioners state, inaccurately, that petitioners were held to have "wrongfully been denied an opportunity to transfer to the freight roster." (Petition, p. 12) Actually, the Court of Appeals held that "there is nothing to indicate a demand for transfer by appellants [petitioners] or a refusal by the Railroad to do so" (R. 71), and petitioners point for such a demand only to the Amended Complaint (Petition, p. 21, fn. 4) which, besides being expressly conditional as seen above, did not demand transfer but only the opportunity to decide, after an accounting and tender of damages, whether or not to transfer from passenger to freight service. It is not without significance that no petitioner has demanded transfer to the freight service in the period that has intervened since the judgment of the Court of Appeals on August 1, 1949.

In light of the above facts, which are undisputed, the reasoning contained in part 2 of the Petition is altogether

specious, and the decisions cited therein have no application to the present case.[4]

## CONCLUSION.

For the reasons set forth above, it is submitted that the petition for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit should be denied.

Respectfully submitted,

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[4] In the present case the Court of Appeals decided as a matter of law that there was no basis for the claim for damages in connection with the second cause of action. (R. 71-72) In each of the cases cited by the petitioners where the appellate court returned the case to the trial court for the fixing of damages, the appellate court decided that there was a cause of action for damages but left it to the lower court to measure in the first instance the amount of the damages to be awarded, for the purpose of which additional evidence was usually required. It is also worthy of note herein that the decision of the Court of Appeals on this aspect of petitioners' second cause of action may be considered *pro tanto* an affirmance of the decision of the District Court. (R. 62, 71-72, 84).

## SUPPLEMENT.

### Relevant Statutory Provisions.

*Section 8 of the Selective Training and Service Act of 1940*, as amended, (54 Stat. 885, 891; 50 U. S. C. Appendix, § 308) provides in part as follows:

"(a) Any person inducted into the land or naval forces under this Act for training and service, who, in the judgment of those in authority over him, satisfactorily completes his period of training and service under section 3(b) [section 303(b) of this Appendix] shall be entitled to a certificate to that effect upon the completion of such period of training and service, which shall include a record of any special proficiency or merit attained. In addition, each such person who is inducted into the land or naval forces under this Act for training and service shall be given a physical examination at the beginning of such training and service; and upon the completion of his period of training and service under section 3(b) [section 303(b) of this Appendix], each such person shall be given another physical examination and, upon the written request of the person concerned, shall be given a statement of medical record by the War Department: Provided, That such statement shall not contain any reference to mental or other conditions which in the judgment of the Secretary of War or the Secretary of the Navy would prove injurious to the physical or mental health of the person to whom it pertains.

(b) In the case of any such person who, in order to perform such training and service, has left or leaves a position, other than a temporary position, in the employ of any employer and who (1) receives such certificate, (2) is still qualified to perform the duties of such position, and (3) makes application for reemployment within ninety days after he is relieved from such training and service or from hospitalization continuing after discharge for a period of not more than one year—

(A) if such position was in the employ of the United States Government, its Territories or possessions, or the District of Columbia, such person shall be restored to such position or to a position of like seniority, status, and pay;

(B) if such position was in the employ of a private employer, such employer shall restore such person to such position or to a position of like seniority, status, and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so;

(C) if such position was in the employ of any State or political subdivision thereof, it is hereby declared to be the sense of the Congress that such person should be restored to such position or to a position of like seniority, status, and pay.

(c) Any person who is restored to a position in accordance with the provisions of paragraph (A) or (B) of subsection (b) shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was inducted into such forces, and shall not be discharged from such position without cause within one year after such restoration.

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(e) In case any private employer fails or refuses to comply with the provisions of subsection (b) or subsection (c), the district court of the United States for the district in which such private employer maintains a place of business shall have power, upon the filing of a motion, petition, or other appropriate pleading by the person entitled to the

benefits of such provisions, to specifically require such employer to comply with such provisions, and, as an incident thereto, to compensate such person for any loss of wages or benefits suffered by reason of such employer's unlawful action. The court shall order a speedy hearing in any such case and shall advance it on the calendar. Upon application to the United States district attorney or comparable official for the district in which such private employer maintains a place of business, by any person claiming to be entitled to the benefits of such provisions, such United States district attorney or official, if reasonably satisfied that the person so applying is entitled to such benefits, shall appear and act as attorney for such person in the amicable adjustment of the claim or in the filing of any motion, petition, or other appropriate pleading and the prosecution thereof to specifically require such employer to comply with such provisions: Provided, That no fees or court costs shall be taxed against the person so applying for such benefits.

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